

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

A G Rogers, L.L.C., a Delaware
Limited Liability Company

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of A G Rogers, L.L.C., a Delaware Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant A G Rogers, L.L.C. owned the real property located at or about 328 Mowry Ave, Fremont, California, upon which "300-328 Mowry Auto Center" operates, in August 2020.

1 3. Defendant A G Rogers, L.L.C. owns the real property located at or about
2 328 Mowry Ave, Fremont, California, upon which “300-328 Mowry Auto
3 Center” operates, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein is
9 responsible in some capacity for the events herein alleged, or is a necessary
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
11 the true names, capacities, connections, and responsibilities of the Defendants
12 are ascertained.

13
14 **JURISDICTION & VENUE:**

15 5. The Court has subject matter jurisdiction over the action pursuant to 28
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California’s Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25
26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to 300-328 Mowry Auto Center (“Auto Center”) in
28 August 2020 with the intention to avail himself of its goods or services

1 motivated in part to determine if the defendants comply with the disability
2 access laws.

3 9. The Auto Center is a facility open to the public, a place of public
4 accommodation, and a business establishment.

5 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
6 to provide wheelchair accessible parking in conformance with the ADA
7 Standards as it relates to wheelchair users like the plaintiff.

8 11. The Auto Center provides parking to its customers but fails to provide
9 wheelchair accessible parking.

10 12. One problem that plaintiff encountered is that there was no accessible
11 parking whatsoever in the parking lot.

12 13. Plaintiff believes that there are other features of the parking that likely
13 fail to comply with the ADA Standards and seeks to have fully compliant
14 parking available for wheelchair users.

15 14. On information and belief the defendants currently fail to provide
16 wheelchair accessible parking.

17 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
18 personally encountered these barriers.

19 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
20 wheelchair accessible facilities. By failing to provide accessible facilities, the
21 defendants denied the plaintiff full and equal access.

22 17. The failure to provide accessible facilities created difficulty and
23 discomfort for the Plaintiff.

24 18. Even though the plaintiff did not confront the following barriers, there
25 is an unramped steps leading to some of the businesses at the Auto Center.
26 Meanwhile, the threshold at the entrances to some of the businesses at the
27 Auto Center requires a person to navigate a small lip that is about more than a
28 1/2 inch in height. Finally, all of the businesses at the Auto Center have pull

1 bar style handles. Plaintiff seeks to have these barriers removed as they relate
2 to and impact his disability.

3 19. The defendants have failed to maintain in working and useable
4 conditions those features required to provide ready access to persons with
5 disabilities.

6 20. The barriers identified above are easily removed without much
7 difficulty or expense. They are the types of barriers identified by the
8 Department of Justice as presumably readily achievable to remove and, in fact,
9 these barriers are readily achievable to remove. Moreover, there are numerous
10 alternative accommodations that could be made to provide a greater level of
11 access if complete removal were not achievable.

12 21. Plaintiff will return to the Auto Center to avail himself of its goods or
13 services and to determine compliance with the disability access laws once it is
14 represented to him that the Auto Center and its facilities are accessible.
15 Plaintiff is currently deterred from doing so because of his knowledge of the
16 existing barriers and his uncertainty about the existence of yet other barriers
17 on the site. If the barriers are not removed, the plaintiff will face unlawful and
18 discriminatory barriers again.

19 22. Given the obvious and blatant nature of the barriers and violations
20 alleged herein, the plaintiff alleges, on information and belief, that there are
21 other violations and barriers on the site that relate to his disability. Plaintiff will
22 amend the complaint, to provide proper notice regarding the scope of this
23 lawsuit, once he conducts a site inspection. However, please be on notice that
24 the plaintiff seeks to have all barriers related to his disability remedied. See
25 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
26 encounters one barrier at a site, he can sue to have all barriers that relate to his
27 disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

23. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

24. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

1 25. When a business provides parking for its customers, it must provide
2 accessible parking.

3 26. Here, accessible parking has not been provided in conformance with the
4 ADA Standards.

5 27. When a business provides paths of travel, it must provide accessible
6 paths of travel.

7 28. Here, accessible paths of travel have not been provided in conformance
8 with the ADA Standards.

9 29. When a business provides facilities such as door hardware, it must
10 provide accessible door hardware.

11 30. Here, accessible door hardware has not been provided in conformance
12 with the ADA Standards.

13 31. The Safe Harbor provisions of the 2010 Standards are not applicable
14 here because the conditions challenged in this lawsuit do not comply with the
15 1991 Standards.

16 32. A public accommodation must maintain in operable working condition
17 those features of its facilities and equipment that are required to be readily
18 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

19 33. Here, the failure to ensure that the accessible facilities were available
20 and ready to be used by the plaintiff is a violation of the law.

21
22 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
23 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
24 Code § 51-53.)

25 34. Plaintiff repleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
28 that persons with disabilities are entitled to full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishment of
2 every kind whatsoever within the jurisdiction of the State of California. Cal.
3 Civ. Code §51(b).

4 35. The Unruh Act provides that a violation of the ADA is a violation of the
5 Unruh Act. Cal. Civ. Code, § 51(f).

6 36. Defendants' acts and omissions, as herein alleged, have violated the
7 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
8 rights to full and equal use of the accommodations, advantages, facilities,
9 privileges, or services offered.

10 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
11 discomfort or embarrassment for the plaintiff, the defendants are also each
12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
13 (c).)

14 38. Although the plaintiff encountered frustration and difficulty by facing
15 discriminatory barriers, even manifesting itself with minor and fleeting
16 physical symptoms, the plaintiff does not value this very modest physical
17 personal injury greater than the amount of the statutory damages.

18
19 **PRAYER:**

20 Wherefore, Plaintiff prays that this Court award damages and provide
21 relief as follows:

22 1. For injunctive relief, compelling Defendants to comply with the
23 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
24 plaintiff is not invoking section 55 of the California Civil Code and is not
25 seeking injunctive relief under the Disabled Persons Act at all.

26 2. Damages under the Unruh Civil Rights Act, which provides for actual
27 damages and a statutory minimum of \$4,000 for each offense.
28

By:

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